

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DENNIS B. McGUIRE,

Petitioner, : Case No. 3:99-cv-140

- vs -

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe Correctional
Institution,

Respondent. :

SCHEDULING ORDER

This capital habeas corpus case is before the Court *sua sponte*. Petitioner has appealed (Doc. No. 139) from Chief Judge Dlott's Order of March 18, 2013 (Doc. No. 138) adopting the Magistrate Judge's recommendation that Petitioner's Motion for Relief from Judgment (Doc. No. 124).

Petitioner's appeal, docketed as Case No. 13-3368 in the Sixth Circuit, cannot proceed without a certificate of appealability. The question of whether to grant or deny a certificate is committed in the first instance to the District Court, but that issue was neither briefed nor decided in connection with the motion for relief.

It is accordingly ORDERED that Petitioner file his motion for certificate of appealability

not later than April 25, 2013. Respondent may file any opposition to that motion not later than ten days after it is filed.

April 15, 2013.

s/ *Michael R. Merz*

United States Magistrate Judge